IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 433 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHHOTUBHAI GULAMBHAI GOSH

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 433 of 2003

MR NM KAPADIA for Petitioner No. 1

MS HARSHA DEVANI AGP for Respondent No. 1-3

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 23/05/2003

ORAL JUDGEMENT

#. The petitioner detenu by filing this petition, challenged the order of detention passed by the District

Magistrate, Bharuch dated 26.11.2002 detaining the petitioner detenu by considering the material placed before her and after recording the satisfaction that petitioner is acting prejudicial to the maintenance of public order and as an authorised officer, the order of detention, by resorting to the provisions of Gujarat Prevention of Anti-social Activities Act, 1985 (hereinafter referred to as "PASA Act" for short) was issued with a view to prevent him from acting in such manner prejudicial to the maintenance of public order by recording satisfaction that the petitioner is a confirmed "bootlegger" within the meaning of Section 2 (b) of the PASA Act.

#. In this petition, the petitioner has taken several contentions for challenging the order of detention and the petitioner has annexed various documents namely the order of detention passed by the District Magistrate, Bharuch dated 26.11.2002, committal order detaining the petitioner at Rajkot District Jail, Rajkot and the grounds of detention dated 26.11.2002 and the other documents, which were relied upon by the Detaining Authority at the time of passing order and letter issued by wife of the petitioner to the District Magistrate dated 15th November, 2002 with the affidavits of several persons. During hearing, Mr. Kapadia, learned advocate for the petitioner has taken me through the petition and the documents attached thereto. As found from the grounds of detention, the Detaining Authority after considering the material placed before her had satisfied that detenu is a confirmed 'bootlegger' and he is acting prejudicial to the maintenance of public order. As found from the grounds of detention, 5 prohibition cases were registered at "B" Division Police Station at Bharuch city against the petitioner detenu between 25.2.2002 to 7.11.2002 and all the 5 cases were pending trial before the Court. In addition to the prohibition case, 3 statements of witnesses were recorded by the police indicating about the incident, which has occurred at the instance of the petitioner, for which public order was disturbed in that area. The two statement of the witness were recorded on 12.11.2002 and one statement of witness was recorded on 15.11.2002. The witnesses had in their statements highlighted about the incidents namely incidents dated 16.10.2002, 20.10.2002 and 1.11.2002, by which, the witnesses have suffered at the instance of the detenu and the public order in that area was disturbed. The witnesses have also because of the threats and high handedness of the detenu, requested the Detaining Authority not to disclose their names and identity. Out of three statements, one statement was verified by the

Deputy Superintendent of Police and two statements were verified by the Detaining Authority herself by calling the witnesses personally. The Detaining Authority had recorded satisfaction that activities of the petitioner is prejudicial to the maintenance of public order and with a view to prevent such activities, she was of the view that the order of detention detaining the petitioner as a 'bootlegger' as contemplated under the PASA Act is to be passed. The Detaining Authority had also while considering the statements of the witnesses, recorded satisfaction by claiming privilege as contemplated under Subsection 2 of Section 9 of the PASA Act by not disclosing the names and identity of the witnesses. While challenging the order of detention, Mr. Kapadia has taken into service only one contention that the claim of privilege under Section 9 (2) of the PASA Act is not genuine and bonafide. The statement of witness has been recorded by the Detaining Authority and the name and address of the said witness has not been supplied, but however, assuming that the Detaining Authority has supplied the exact date, time and place of the alleged incident as narrated by the witness in taking that the said incident occurred in that particular area at particular time and on particular date and if such incident had really happened and if the detenu was really involved in that incident, he would be naturally knowing the witness and therefore, no privilege was required to be claimed regarding the identity of the witness. But since no such incident ever occurred false has been recorded to show involvement of the detenu in disturbing the Public Order and the Detaining Authority has accepted the statement of the witness and the repetition of the say of the witness as gospel truth without the verification as to whether such incident had ever occurred or not at the given place and at the given date and time, whether the detenu, really involved in such incident or not, whether the concerned witness really has any enmity with the detenu or not. Thus, the claim of privilege is not bonafide and therefore, the claim of privilege fails and prayed for setting aside the order of detention.

#. Ms. Harsha Devani, learned AGP has supported the order of detention. While supporting the order of detention, she has vehemently urged that as found from the grounds of detention, it transpires the involvement of the petitioner in 5 prohibition cases and further, the statements recorded by the police were verified by the Deputy Superintendent of Police and Detaining Authority and from the said material, the Detaining Authority had recorded satisfaction that the detenu is acting

prejudicial to the maintenance of public order. She has also taken me through the statements of witnesses and as the witnesses have apprehended because of the fear at the instance of the petitioner, the Detaining Authority has rightly not disclosed the names and identity of the witnesses and the Detaining Authority has rightly claimed privilege under Section 9 (2) of the PASA Act. No affidavit is filed by the Detaining Authority, though Rule was issued and made it returnable after 6 weeks as per order dated 21.1.2003.

#. Mr. Kapadia, learned advocate for the petitioner has while arguing the matter and on the point raised in the petition placed reliance upon the decision in case of Mohmad Sarif @ Kalio Nurmohmadsarnibapu Shaikh Vs. Commissioner of Police, Ahmedabad and Ors. reported in 1997 (1) GLH p.1017 and the judgements of this court while deciding Special Civil Application No. 12491 of 2002, Special Civil Application No. 633 of 2002 and Special Civil Application No. 2007 of 2003, which were rendered by this court today after considering the submissions made by learned AGP.

#.The Detaining Authority has not filed any reply to the contentions raised in the petition and there is no explanation of the Detaining Authority regarding breach of public order and merely by reproduction of such statements in the body of the order cannot be said to be sufficient so as to show the active application of mind by the Detaining Authority at the time of passing of the order, more particularly when there is no contemporaneous evidence with the Detaining Authority, the privileged claimed by the Detaining Authority shows non application of mind and this court is of the view that order of detention passed by the Detaining Authority deserves to be set aside only on this ground alone and detenu is ordered to be set free. No other point is canvassed.

#. As discussed hereinabove, petition is allowed. The impugned order dated 26.11.2002 passed by the District Magistrate, Bharuch is quashed and set aside. The detenu Shri Chhotubhai Gulambhai Gosh is ordered to be released forthwith, if not required in any other case. Rule is made absolute accordingly. Direct Service Permitted.

(D.K. Trivedi, J.)
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